STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **File No. 89847-001**

v

Blue Cross Blue Shield of Michigan
Respondent
_____/

Issued and entered
this 14th day of August 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On May 16, 2008, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the request and accepted it on May 27, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on June 4, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM Community Blue Group Benefits Certificate (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II
FACTUAL BACKGROUND

On October 24, 2007, and again on December 4, 2007, the Petitioner received medical nutrition services at the XXXXX in XXXXX. The charges for these services totaled $100.00. BCBSM denied coverage for this care.

The Petitioner appealed the denial. BCBSM held a managerial-level conference on April 9, 2008, and issued a final adverse determination dated April 18, 2008, upholding the denial.

III
ISSUE

Did BCBSM correctly deny coverage for the Petitioner's medical nutrition services provided on October 24, 2007 and December 4, 2007?

IV
ANALYSIS

Petitioner's Argument

The Petitioner argues that she had diabetic counseling at the XXXXX, and that diabetic counseling is a covered benefit under her certificate and BCBSM is required to pay for it.

The Petitioner says that BCBSM will not cover the services because the XXXXX submitted the claim as "medical nutrition therapy" (CPT codes 97802 and 07803) and BCBSM says it only covers "diabetic counseling" under her certificate. According to the Petitioner, the clinic will not recode the bills because it does not use the codes required by BCBSM for diabetic counseling (G0108 and G0109). The Petitioner believes that that the office notes from the clinic show that the reason for the visits was counseling for her diabetes.

The Petitioner thinks that BCBSM is required to pay for her care at XXXXX on October 24, 2007, and December 4, 2007.

BCBSM's Argument

BCBSM says the certificate clearly states that services must be medically necessary in order to be paid and that whether a service is medically necessary and appropriate is a determination

made by BCBSM based on criteria and guidelines developed by physicians for BCBSM who act for their respective provider type or medical specialty.

BCBSM's medical consultant conducted a review of the Petitioner's documentation and it was determined that the services billed by XXXXX were coded appropriately. Reimbursement for these services was denied because medical nutrition services are not a contract benefit.

Commissioner's Review

Section 416b of the Nonprofit Health Care Corporation Reform Act (MCL 550.1416b) requires BCBSM to provide coverage for programs to prevent diabetes and "diabetes self-management training to ensure that persons with diabetes are trained as to the proper self-management and treatment of their diabetic condition." That section is quoted here in its entirety:

> (1) A health care corporation shall establish and provide to members and participating providers a program to prevent the onset of clinical diabetes. This program for participating providers shall emphasize best practice guidelines to prevent the onset of clinical diabetes and to treat diabetes, including, but not limited to, diet, lifestyle, physical exercise and fitness, and early diagnosis and treatment.
> (2) A health care corporation shall regularly measure the effectiveness of a program provided pursuant to subsection (1) by regularly surveying group and nongroup members covered by the certificate. Not later than 2 years after the effective date of the amendatory act that added this section, each health care corporation shall prepare a report containing the results of the survey and shall provide a copy of the report to the department of community health.
> (3) A health care corporation certificate shall provide benefits in each group and nongroup certificate for the following equipment, supplies, and educational training for the treatment of diabetes, if determined to be medically necessary and prescribed by an allopathic or osteopathic physician:
> (a) Blood glucose monitors and blood glucose monitors for the legally blind.
> (b) Test strips for glucose monitors, visual reading and urine testing strips, lancets, and spring-powered lancet devices.
> (c) Insulin.
> (d) Syringes.
> (e) Insulin pumps and medical supplies required for the use of an insulin pump.
> (f) Nonexperimental medication for controlling blood sugar.
> (g) Diabetes self-management training to ensure that persons with diabetes are trained as to the proper self-management and treatment of their diabetic condition.

> (4) A health care corporation certificate shall provide benefits in each group and nongroup certificate for medically necessary medications prescribed by an allopathic, osteopathic, or podiatric physician and used in the treatment of foot ailments, infections, and other medical conditions of the foot, ankle, or nails associated with diabetes.
> (5) Coverage under subsection (3) for diabetes self-management training is subject to all of the following:
> (a) Is limited to completion of a certified diabetes education program upon occurrence of either of the following:
> (*i*) If considered medically necessary upon the diagnosis of diabetes by an allopathic or osteopathic physician who is managing the patient's diabetic condition and if the services are needed under a comprehensive plan of care to ensure therapy compliance or to provide necessary skills and knowledge.
> (*ii*) If an allopathic or osteopathic physician diagnoses a significant change with long-term implications in the patient's symptoms or conditions that necessitates changes in a patient's self-management or a significant change in medical protocol or treatment modalities.
> (b) Shall be provided by a diabetes outpatient training program certified to receive medicare or medicaid reimbursement or certified by the department of community health. Training provided under this subdivision shall be conducted in group settings whenever practicable.
> (6) Benefits under this section are not subject to dollar limits, deductibles, or copayment provisions that are greater than those for physical illness generally.
> (7) As used in this section, “diabetes” includes all of the following:
> (a) Gestational diabetes.
> (b) Insulin-dependent diabetes.
> (c) Non-insulin-dependent diabetes. [Underlining added]

There is no dispute in this record that the Petitioner is diabetic and thus eligible for diabetes self-management training if medically necessary. Section 416b(1) includes ‘diet’ as one of the elements of diabetes self-management training, which might by satisfied by medical nutritional therapy. However, Section 416b(5)(a) also says that the mandatory coverage for diabetes self-management training is limited to completion of a “certified diabetes education program.”

A review of the notes dealing with the services provided at XXXXX shows that medical nutritional therapy was provided. There is nothing in the record that shows that the medical nutritional therapy was part of a certified diabetes education program (which would have been billed with codes G0108 and G0109). While general nutritional therapy may be beneficial to diabetics, it

is not otherwise included as a covered benefit in the certificate and is not mandated in Section 416b.

The Commissioner finds that the Petitioner received medical nutritional therapy and not diabetes self-management training at the XXXXX. Since medical nutritional therapy is not a covered benefit under the certificate or mandated by state law, BCBSM correctly denied coverage under the terms and conditions of the certificate.

V
ORDER

BCBSM's final adverse determination of April 18, 2008, is upheld. BCBSM is not required to cover the services provided at the XXXXX on October 24, 2007, and December 4, 2007.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Commissioner